

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TENNESSEE

UNITED STATES OF AMERICA	)	
	)	
v.	)	NO.: 3:08-cr-142
	)	JUDGES PHILLIPS/SHIRLEY
DAVID C. KERNELL	)	

**EXPERT DISCLOSURE: PHILLIP HAMPTON**

Pursuant to Rule 16(b)(1)(C) of the Federal Rules of Criminal Procedure, the defendant provides notice of testimony that may be admitted under Rules 702, 703 or 705 of the Federal Rules of Criminal Procedure.

Phillip Hampton is an expert in the field of computer forensics. Mr. Hampton's qualifications are set out in the accompanying c.v. Mr. Hampton will testify as to the result of his examination of the contents of the hard-drive and other electronic evidence provided by the government in discovery.

The bases for his opinions include the training and experience set out in the c.v. He has relied on the electronic evidence submitted by the government, the discovery and the four forensic reports provided by the government. His firm has also conducted independent testing of the material. Mr. Hampton has not had the opportunity to review the discovery that was provided by the government dated August 24 and August 25, 2009, and therefore this disclosure may be supplemented.

The summary of Mr. Hampton's testimony is as follows:

1. Based on the material provided by the government, the time that elapsed between the initial attempt to sign on to the Yahoo! account and the successful guessing

of the answers to the password reset questions was very short. Mr. Hampton will also describe the time line regarding activity on the account until it was blocked.

2. The Yahoo! account had been set up using very simple password reset questions. The answers to those questions were available on easily accessible public web sites.

3. Anyone with an internet connection can access the Yahoo! server, including the password reset page for any Yahoo! e-mail address.

4. The process of resetting the password in this case took no specialized computer skills.

5. Mr. Hampton may explain the manner in which computers record data and the process by which data can or cannot be deleted or erased. He will explain that all internet browsers come with a built in tool to erase browsing history.

6. Mr. Hampton will explain the “defrag” tool and the fact that it is not an erasing tool. There are a multitude of free erasing tools on the internet, and that there was no evidence of the use of any of those tools on the computer in question.

7. The significance of a document being found in the “Documents” folder on a Windows computer is that it indicates no effort to conceal the file.

8. Mr. Hampton will also describe the amount of time that elapsed between the last activity on the computer and the time that the Federal Bureau of Investigation removed the computer from Mr. Kernell’s desk.

9. Mr. Hampton will also explain that there are several legitimate uses for proxy programs and will explain the significance of someone who knows how to use a proxy program signing on to a site without using one.

10. Depending upon the forensic testimony introduced by the government, Mr. Hampton may be asked to comment upon the government methods or conclusions.

RITCHIE, DILLARD & DAVIES, P.C.

/s/ Wade V. Davies  
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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that this expert disclosure is being provided by e-mail to counsel for the government, this 30th day of August, 2009. The notice is not being filed.

/s/ Wade V. Davies  
WADE V. DAVIES